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GENERAL ASSEMBLY
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Item 93 of the provisional agenda*
QUESTION OF EAST TIMOR

SECURITY COUNCIL
Thirty-sixth year

Note verbale dated 11 August 1981 from the Permanent Representative of Cape Verde to the United Nations addressed to the Secretary-General

The Permanent Representative of the Republic of Cape Verde to the United Nations presents his compliments to the Secretary-General of the United Nations and has the honour to request that the enclosed document of the Permanent People's Tribunal be circulated as an official document of the General Assembly, under item 93 of the provisional agenda, and of the Security Council.

In view of the importance of the document, it would be desirable that its publication be given maximum priority.

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* A/36/150.

ANNEX

Session of the Permanent People's Tribunal on East Timor

Lisbon, 19-21 June 1981

President: François Rigaux, Professor of Private International Law, Catholic University of Louvain (Belgium)

Vice-President: Ruth First, writer and sociologist, head of research at Eduardo Mondlane University, Maputo, political exile (South Africa)

Vice-President: Armando Uribe, former Ambassador, Professor of International Law at the Sorbonne, political exile (Chile)

Richard Bäumlin, Professor of Constitutional Law at the University of Berne, Member of Parliament (Switzerland)

José Echeverría, Professor of Philosophy at the University of Puerto Rico and Professor of Law at the Inter-American University, political exile (Chile)

Edmond Jouve, Professor of Third World International Relations at the Sorbonne (France)

Léo Matarasso, barrister-at-law, Paris (France)

Raymundo Panikkar, specialist in oriental religions, Professor at the University of Santa Barbara, California (India)

Salvatore Senese, judge, member of the Supreme Council of the Judiciary (Italy)

Ernst, Utrecht, former Member of Parliament, sociologist (Indonesia)

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DECISION

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THE PERMANENT PEOPLE'S TRIBUNAL,

Meeting in Lisbon on 19, 20 and 21 June 1981,

Considering the Charter of the United Nations of 26 June 1945,

Considering Law No. 10 of 20 December 1945 establishing the Nuremberg International Military Tribunal,

Considering the Universal Declaration of Human Rights of 10 December 1948,

Considering Declaration 1514 (XV) on the Granting of Independence to Colonial Countries and Peoples of 14 December 1960,

Considering the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations of 24 October 1970,

Considering the Definition of Aggression emanating from the General Assembly of the United Nations of 24 December 1974,

Considering the principles of peaceful co-existence adopted at Bandung, Indonesia, on 24 April 1955,

Considering the resolutions of the conferences of Heads of State or Government of Non-Aligned Countries, in particular those adopted at Colombo (29 August 1976) and Havana (1979),

Considering the Hague Conventions of 1899 and 1907 on the laws and customs of war,

Considering the Geneva Conventions of 12 August 1949,

Considering the 1977 Protocols additional to the Geneva Conventions of 1949,

Considering resolution 3485 (XXX) on the question of Timor, adopted by the General Assembly of the United Nations on 12 December 1975,

Considering resolution 384 (1975) adopted by the Security Council of the United Nations on 22 December 1975,

Considering resolution 389 (1976) adopted by the Security Council of the United Nations on 22 April 1976,

Considering the resolutions adopted by the General Assembly of the United Nations on 1 December 1976, 28 November 1977, 13 December 1978, 21 November 1979 and 11 November 1980,

Considering Act No. 7/75 approved by the Council of the Revolution and promulgated on 11 July 1975 by the President of the Portuguese Republic,

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Considering the Constitution of the Portuguese Republic of 2 April 1976 (especially art. 307),

Considering the Declaration proclaiming the independence of the Democratic Republic of East Timor of 28 November 1975,

Considering the FRETILIN programme of 1975,

Considering the Universal Declaration of the Rights of Peoples adopted at Algiers on 4 July 1976,

Considering the judgements rendered by Russell Tribunal I (1967) and Russell Tribunal II (1974, 1975 and 1976),

Considering the statute of the Permanent People's Tribunal and the judgements rendered by this Tribunal (1979-1981),

Considering the copious written and photographic evidence furnished to the members of the Tribunal, especially issue No. 7 (August 1976) of Decolonization, a publication of the Department of Political Affairs, Trusteeship and Decolonization of the United Nations, devoted to East Timor, as well as the following documents published by the Indonesian Government:

"Government statements on the East Timor question", February 1975;

"Massacre in East Timor", March 1976;

"Process of decolonization in East Timor", August 1976;

"La décolonisation au Timor oriental", August 1976;

"Decolonization in East Timor", March 1977;

"The Province of East Timor, development in progress", August 1980;

Having heard:

The opening statement by Ruth First, Vice-President of the Permanent People's Tribunal;

The reading by Gianni Tognoni, Secretary-General of the Permanent People's Tribunal, of the application to the Permanent People's Tribunal by FRETILIN; the letter of 8 May 1981 addressed to His Excellency the Prime Minister of Portugal; and the letter of 15 May 1981 addressed to His Excellency the President of the Republic of Indonesia;

The introductory report of the Co-ordinator of the present session of the Tribunal, Luis Moita, head of the Amilcar Cabral Information and Documentation Centre (CIDAC) Lisbon;

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Having heard reports or statements by:

- Fernando Sylvan, President of the Portuguese Language Society;
- Abílio Araújo, member of the Central Committee of FRETILIN and Minister of State for Economic Affairs of the Democratic Republic of East Timor;
- Mari Alkatiri, member of the Central Committee of FRETILIN and Minister for Foreign Affairs of the Democratic Republic of East Timor;
- Ken Fry, member of the Australian Parliament (House of Representatives);
- Adelino Gomes, Portuguese journalist;
- Jill Jolliffe, Australian journalist;
- Jim S. Dunn, diplomat, former Consul at Dili, former Director of the Foreign Affairs Group of the Research Department, Australian Parliament;
- Rev. Fr. Leoneto do Rego, Portuguese missionary;
- Luis Moita, who read a communication addressed to the Tribunal by two refugees unable to attend for security reasons;
- Bruno Pistocchi, Italian citizen, former Salesian missionary who has lived in Timor;
- Rev. Fr. Pat Walsh, Australian citizen, missionary of the Sacred Heart Fathers;
- Michael Chamberlain, United States citizen, Human Rights Co-ordinator for Clergy and Laity Concerned in New York City, who explained the arguments of the Indonesian Government;
- Loff Barreto, Portuguese citizen, barrister;
- Michel Robert, French citizen, assistant at the University of Paris I (Pantheon-Sorbonne), Chairman of the East Timor Solidarity Association;
- Bernard Dewit, Belgian citizen, barrister, Brussels;
- Robert van Lierop, jurist, United States citizen;
- Richard Franke, United States citizen, anthropologist;
- W. F. Wertheim, Netherlands citizen, former Professor of Sociology at the University of Amsterdam;
- Hadjar Jusfuik, Indonesian citizen, journalist;
- Soei Liong Liem, Indonesian citizen, researcher at the Royal Tropical Institute;

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Having heard statements by:

- Diógenes Boavida, Minister of Justice of the People's Republic of Angola;
- Celestino da Costa, Minister of Justice of the Republic of Sao Tome and Principe;
- Cruz Pinto, Minister of State, member of the Council of the Revolution of Guinea-Bissau;
- Isaac Murargy, Ambassador, head of the Mozambican delegation, representing FRELIMO;
- Alvaro Vicente Silva, diplomat, representing the Government of Cape Verde;

Having heard the call - to which there was no response - by Raymundo Panikkar, on behalf of the Permanent People's Tribunal asking whether anyone present at the hearing wished to defend the Indonesian case,

Having heard the summing up by the President of the Permanent People's Tribunal François Rigaux,

Having taken cognizance of the following documents placed before the Tribunal:

"Notes on the current situation in East Timor" (document drawn up by the Foreign Affairs Group of the Australian Parliament and made public on 8 March 1979);

"The situation in East Timor" (report on conversations with Timorese refugees in Portugal, by J. S. Dunn, Canberra, 11 February 1977);

File on East Timor prepared for the International Committee of the Red Cross (document drawn up by Action for World Development in September 1979);

Petition on East Timor submitted to the Fourth Committee of the General Assembly of the United Nations by Professor Roger J. Clark, on behalf of the International League for the Rights of Man, on 14 October 1980;

"Notes on the East Timor issue based on an international visit - 7.6.80-18.8.80" by Pat Walsh, Christmas 1980;

"Report of the visit made to Portuguese East Timor from 16 to 18 September 1975 by Senator Gietzelt and K. L. Fry".

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HISTORICAL INTRODUCTION

East Timor is a Territory some 19,000 square kilometres in area, situated at the eastern end of the Sunda archipelago. A few years ago, the population was estimated at 700,000. Its people belong to the Proto-Malay and Melanesian ethnic groups.

During the recorded history of the pre-colonial period, jurisdiction over this geographical area east of the islands of Sulawesi and Lombok was claimed by the Javan empires, which were at their apogee between the eighth and twelfth centuries. Those empires, however, had no cultural or religious impact on Timor. Early in the Christian era, Hindu culture was introduced into the region, followed in the fifteenth century by the spread of Islam throughout the area: yet the population of Timor remained animist.

The territory of the island was divided between several kingdoms, which frequently vied for control. In about the sixteenth century, with the dismemberment of Javan empires, the territory was divided into two groups of kingdoms: one under the supremacy of the Kingdom of Sombay, in the western part of the island and the other, under the hegemony of the Kingdom of Behale, in the eastern part. Even at that time, the latter group had a common language, Tetum, which has now become the national language of East Timor.

In about 1515, the first group of Portuguese Dominican missionaries arrived on the island of Timor, thereby introducing the first elements of colonial domination. This fact was to determine the subsequent confrontation between Christianity and the expanding Islamic religion in the region, with Christianity serving as an element of Portuguese domination.

It was not until 1640 and after that Portugal stepped up its political and military presence in Timor, despite the continued opposition of the numerous kingdoms, whose rivalry was exploited by the colonial forces. In the meantime, the Dutch had driven the Portuguese from the other neighbouring islands and had seized the western part of Timor (under the hegemony of the Kingdom of Sombay). Fearing a Dutch attack, the Portuguese transferred their capital from Lifan (Oe-Cusse) to Dili, although the population of Oe-Cusse continued to reject Dutch domination, thereby remaining linked to "Portuguese Timor".

For more than three centuries Portugal was to maintain colonial domination over East Timor. On many occasions its oppression provoked local uprisings, the most recent of which took place in 1910, when over 3,000 Timorese died as a result of colonial repression.

In 1859, Portugal signed a treaty with the Netherlands fixing the frontier between Dutch Timor and Portuguese Timor, the former remaining part of the colony of the Dutch East Indies, which after independence in 1945 became the Republic of Indonesia. The Portuguese colony of Timor became an "overseas province" of Portugal in 1951 and later, in 1972, an "autonomous region of the Portuguese Republic".

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The combination of these historical, social, cultural and religious factors, consolidated by the dialectic of opposition to colonial domination, helped to give birth to a collective identity for the people of East Timor, so that it is legitimate to speak of a genuine national entity and specific cultural identity, which are all the more remarkable in that they are in harmony with respect for local cultural traditions.

MOTIVATIONS

I. THE INDONESIAN GOVERNMENT

A. De facto

On 25 April 1974 the Portuguese dictatorship was overthrown by the military, the liberation struggle in the colonies having played a decisive role in the downfall of the régime. The dynamic of popular feeling set in motion in Portugal at that time was a factor in the formal recognition by the President of the Republic, on 27 July 1974, of the right of the peoples of the colonies to self-determination and independence.

As a result of these events, there was an upsurge of political activity in East Timor and an overt expression of Timorese nationalism. Local social and political forces mobilized around three basic alternatives for the people's future: a tiny minority, with the support of Djakarta, advocated integration into Indonesia (APODETI); another group (UDT), dominated by local leaders with colonial links, adopted a vacillating position, first advocating the continuance of a situation of dependence vis-à-vis Portugal, then the postponement of independence and, finally, integration into Indonesia; a third force identified itself with the nationalist ideal (originally ASDT, later FRETILIN).

Portugal chose to negotiate with these political groups for a transfer of power to the Timorese: an Act of 11 July 1975 placed a time-limit on Portuguese sovereignty over and administration of the Territory of East Timor and laid down the procedures for the exercise of the right to self-determination. Under article 2 of the Act, in keeping with the principle of sovereignty of the people, the Portuguese State conferred on a Popular Assembly representative of the people of the Territory the reponsibility for determining the nation's political future.

However, a number of circumstances prevented the implementation of that decolonization plan. In the first place, the fragmentation of authority in Portugal, the complexity of the problems then facing the Portuguese leaders and the lack of means to intervene prevented Portugal from following a coherent, steadfast policy to ensure effective exercise of the Timorese people's right to self-determination.

Furthermore, events in East Timor took a decisive turn on 11 August 1975. With the support of a few Portuguese officers and the local police, there was a coup d'état led by UDT, which, after being allied with FRETILIN from January to May 1975, had unilaterally broken up the coalition as a result of pressure from Djakarta. This coup by the conservative elements set off an immediate reaction on the part of FRETILIN, which enjoyed the support of the majority of the people and

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to which military units of the local army had rallied. An armed conflict broke out, in which some 3,000 people lost their lives.

FRETILIN quickly gained political, popular and military supremacy. Towards the end of August, FRETILIN controlled virtually the whole of the Territory. The UDT leaders were either on the run or in prison. Having lost control of the situation, the Portuguese Governor took refuge on the little island of Ataúro.

The situation created at that stage was a face-off between de jure power and de facto power. The Portuguese flag still flew over Government House; FRETILIN still recognized the Portuguese administration and repeatedly proposed to Lisbon negotiations which, although promised, never took place. For all practical purposes power passed to FRETILIN, which administered the Territory and proceeded to undertake social reforms. Numerous foreign visitors bore witness to the genuine popular consensus of which FRETILIN was the focus. Only border incidents provoked by the Indonesian army and by a few refugees in West Timor disturbed the peace.

These incidents became increasingly serious; they included shellings of the towns of Maliana and Balibo by heavy artillery, heralding the Indonesian intention to launch military aggression against the Territory of East Timor in accordance with a plan drawn up several months previously. In view of the imminent risk of foreign invasion, the impotence of the Lisbon authorities and the power vacuum left by the colonial Government, FRETILIN, inasmuch as it was effectively exercising power and had been legitimized by popular support, took the decision to proclaim independence unilaterally.

Thus, on 28 November 1975, the Democratic Republic of East Timor was established, with a Constitution, a President of the Republic, a Government, a political programme and military power, the institutionalized expression of the collective will to independence.

The Democratic Republic of East Timor was recognized immediately by 12 States, including the former Portuguese colonies in Africa, and later by two other States. Portugal did not recognize the new State.

The proclamation of the Democratic Republic of East Timor was followed, on 29 November, by a statement from the coalition of parties opposed to FRETILIN asserting that, by its action, the latter had put an end to Portuguese sovereignty over Timor. Those parties, operating from outside East Timor and supported by no one but Indonesia, proceeded to announce the integration of East Timor into Indonesian territory. This pseudo-declaration of integration was also not recognized by Portugal.

Indonesian armed forces invaded the Democratic Republic of East Timor on 7 December. On that day, Portugal broke off diplomatic relations with Indonesia, describing its intervention as an "act of aggression".

On 17 December, a "provisional government" composed of representatives of UDT, APODETI, KOTA and the Trabalhista party was set up at Dili.

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The Indonesian troops met with unexpected resistance; on 8 January 1976, the official Indonesian news agency ANTARA admitted that the "provisional government" controlled only a third of the Territory of East Timor. Indonesian aggression proved to be extremely brutal; according to reliable independent witnesses, it caused the death or disappearance of some 200,000 people. The physical elimination of the Timorese people was to go hand in hand with an attempt to destroy their cultural identity. Thus, Tetum was banned from the schools, as it had been in the days of Portuguese colonization, and an attempt was made to impose Islam on people who, for the most part, were animists or Christians.

On 31 May 1976, the "provisional government" established a "Representative People's Assembly" of 28 members, which proceeded to draft a petition calling upon President Suharto to integrate East Timor into Indonesia.

On 17 July 1976, the Indonesian Parliament unanimously adopted an "act of integration" by which East Timor would become the twenty-seventh province of the Indonesian Republic.

Thus, an act of aggression which had already been vigorously condemned by the United Nations General Assembly and Security Council in their resolutions 3485 (XXX) of 12 December 1975 and 384 (1975) of 22 December 1975 was endorsed. The condemnation was to be expressed even more forcefully in resolution 389 (1976), adopted by the Security Council on 22 April 1976, and in the resolutions adopted by the General Assembly on 1 December 1976, 28 November 1977, 13 December 1978, 21 November 1979 and 11 November 1980.

Following border clashes with FRETILIN troops which began in the autumn, the Indonesian Government launched a massive invasion on 7 December 1975, a few weeks after the declaration of independence, attacking first Dili and then Baucau.

Despite systematic attempts by the Indonesians to draw a veil of silence over what has happened in East Timor - mention should be made in this connexion of the murder of five Australian journalists as early as October 1975, and of the fact that ICRC was barred from the island until the summer of 1979 and its activity since then has been very limited, not extending, for instance, to the monitoring of compliance with the rules of the law of war - there is confirmed evidence of atrocities committed from the time of the outbreak of hostilities and continuing since then, against both combatants and civilians:

Upon landing at Dili on the morning of 7 December, Indonesian troops fired indiscriminately on civilians even though they were not putting up any resistance.

The next day, at 9 a.m., more than 27 people, mostly women, were shot on the quayside at Dili in front of a large crowd, which was forced to count the victims. At 2 p.m., 59 men were shot at the same spot.

During the same period, 30 Chinese were shot near the former military police headquarters at Dili. According to various witnesses, very many Chinese were killed at that time.

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The brutality inflicted on the population continued after the invasion. For instance, on 17 August 1977, several people were shot for refusing to participate in a demonstration to mark Indonesia's national day.

It has been established that, ever since the invasion, Indonesian troops have continued to create a climate of fear and total insecurity through summary executions and arbitrary imprisonment. It is likewise established that the Indonesian troops have systematically executed prisoners of war. This fact is corroborated by ICRC, which reported in September 1979 that "there are sufficient reports for the years 1976-1979 (referring, inter alia, to torture and brain-washing) to justify concern about respect for the Geneva Conventions and to prove that they are not being observed" and that "generally speaking, it appears that FRETILIN leaders and their relatives (to the third generation, according to one report), educated, physically fit people, upon coming down from the mountains to surrender, have been exterminated together with members of the élite (however, there are exceptions to this rule)".

ICRC cites the case of a Timorese family executed in July 1979 at Fahi-Nehan (between Same and Alas). All seven - father, mother and five children between the ages of 12 and 17 - were killed because they were related by marriage to the FRETILIN leader Lobato.

When they are not killed, prisoners are held in atrocious conditions. According to a report prepared by the Foreign Affairs Group of the Australian Parliament published on 8 March 1978 "over 1,000 Timorese political prisoners are being held in inhuman conditions at Dili ... they are beaten, tortured, starved, and kept in unhygienic conditions in overcrowded cells".

A report published by the Australian Council for Overseas Aid in 1979 estimated that there were some 40 prisons throughout East Timor. The International League for the Rights of Man, in its petition concerning East Timor to the United Nations on 14 October 1980, reported that prison conditions were very bad indeed.

There is widespread evidence of the use of torture in the above-mentioned petition and elsewhere. According to the report by the Australian diplomat Jim Dunn of 11 February 1977 on his conversations with Timorese refugees in Portugal, there was at that time a torture centre in the Hotel Tropical at Dili under the command of Major Yusman.

Evidence collected by the Australian diplomat Jim Dunn in his report of 11 February 1977 also speaks of the systematic looting of civilian and church property. Evidence of acts of pillage unconnected with the hostilities indicate that they took place, in part at least, with the tacit consent of senior officers if not on their orders. The case of cars and tractors may be cited in this respect; virtually all the vehicles on the island were loaded onto boats by Indonesian soldiers after the invasion. Many houses in Dili were looted at that time, following the temporary evacuation of the occupants.

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Because of strong FRETILIN resistance, Indonesia intensified its war efforts by launching massive offensives in and after September 1977 and again in May 1978.

It was from then on, in particular, that the mass bombing of the interior took place, destroying whole villages. The document prepared by the Foreign Affairs Group of the Australian Parliament, quoted above, says that an Indonesian official privately admitted that hundreds of villages had been wiped off the face of the earth by the bombing, and that the names of many places had disappeared from the map of East Timor.

The aim of the mass bombing was either to exterminate a population which was supporting FRETILIN or to cause the people to flee from their homes and force them to place themselves under the strict surveillance of the Indonesian troops. For that purpose 150 "resettlement areas" were established where, in 1979, nearly 200,000 people, according to Assistant Secretary of State Holbrooke, and 300,000 according to other sources, were living under strict surveillance.

The systematic destruction of homes and the displacement of the population to the lowlands were accompanied by the equally systematic and massive destruction of crops in order to starve any recalcitrants or at least drive them out of the mountain area.

The bombing of homes and the destruction of crops were components of a strategy culminating in the herding of large numbers of people into the "resettlement areas", where they were cut off from their traditional social environment to face starvation. Experts noted that the people herded together in that way would inevitably be dependent on food aid, since it was impossible to produce sufficient food in the areas where they had been assembled.

By destroying the former structures of society and production, this strategy seriously jeopardized not only the health and physical survival of the Maubere people but, at a deeper level, their social and cultural identity.

As for the number of victims of the war, the occupation and the starvation strategy, it is impossible to give precise figures as long as the Indonesian *de facto* authorities continued to prohibit free access to all parts of East Timor. It is possible, however, to arrive at some very rough estimates on the basis of various evidence. Prior to the invasion the population numbered 656,000, taking into account the victims and refugees already created by civil war.

A report from the Indonesian church which was seen by Jim Dunn in late 1976 speaks of 100,000 victims of the Indonesian invasion and occupation even at that time.

On 1 April 1977, the Indonesian Minister for Foreign Affairs, Mr. Malik, himself gave Australian radio a figure of 50,000 to 80,000 dead. According to information given to Jim Dunn by a high-ranking Indonesian official, by the end of 1980 the population numbered no more than 400,000.

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Huge numbers of people perished as a result of the starvation strategy. The report of an ICRC delegation, which was finally able to visit East Timor in July 1979 and to see a population of 75,000 in 13 villages, concluded that 60,000 people were in "an alarming state of malnutrition, 20,000 of them were at death's door and no aid could save them". It should be noted that the ICRC delegates were not able to visit the most seriously affected areas or those that were militarily sensitive.

Various reports, including that of Jim Dunn, come to the conclusion that between one sixth and one third of the Timorese population has perished since the invasion.

B. De jure

1. Refutation of the justifications given for the Indonesian military presence

(a) Historical ties

Apart from the geographical contiguity of the eastern and western parts of the island of Timor, the Indonesian Government has not shown any significant historical ties prior to colonization between the peoples occupying the two parts of the island of Timor, much less between East Timor and Indonesia. [1]

Consequently, bearing in mind the findings of both the International Court of Justice and the Permanent People's Tribunal in the Western Sahara case with respect to the ties alleged by the Moroccan Government between that Territory and the Sherifian Empire, there are even stronger grounds for stating that there have never been any historical ties between Indonesia and the people of the eastern part of the island of Timor which could justify the reintegration of that Territory into a "greater Indonesia". In addition, as the Permanent People's Tribunal decided in its above-mentioned advisory opinion of 11 November 1979, "the restoration of national unity which may have existed prior to decolonization must be effected with due regard to the basic principle of decolonization, namely, the right to self-determination" (No. 22).

(b) Respect for colonial frontiers

According to the principle uti possidetis, which dates back to the decolonization of Latin America, the frontiers of new States emerging from colonial liberation struggles are identical with those of the former colonial possessions. In the light of this principle, which appears to be the expression of positive international law and which Indonesia itself invoked in order to take over the whole of the territories comprising the Netherlands East Indies, Indonesia cannot assert any claim to the territories assigned to Portugal under the Treaty concluded at Lisbon on 20 April 1859 between the Netherlands and Portugal, the Hague Convention of 1 October 1904 or the arbitral award made pursuant to the arbitration agreement signed at The Hague on 3 April 1913 by those States.

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[1] See, inter alia, P. D. Elliot, "The East Timor dispute", 271 C.L.Q. (1978), 247 and notes.

(c) Unilateral declarations by the Indonesian Government

During the debate in the First Committee at the ninth session of the General Assembly of the United Nations (1954), the representative of Indonesia stated:

> "Indonesia was the national political name of the former Netherlands East Indies, including West Irian... The question whether West Irian had cultural links with other Indonesians was irrelevant... The boundaries of that State [Indonesia] could only be the boundaries of the former Netherlands East Indies with whose freedom the national [independence] movement had been concerned."

The Indonesian representative therefore accepted that the frontiers of the former Netherlands East Indies and the national frontiers of Indonesia were identical. Consequently, according to the Indonesian Government's line of argument, there is a kind of automaticity in the transfer of sovereignty, entirely apart from any cultural or ethnic characteristics.

At a plenary meeting during the fifteenth session of the General Assembly (1960), the representative of Indonesia stated:

> "We do not make any claim to any other part of the Indonesian Archipelago. Indonesia explicitly does not make any claim at all to territory such as that in Borneo or Timor which lie within the Indonesian Archipelago but was not part of the Netherlands East Indies."

The same very firm position was taken at the seventeenth session (1962): "Not only have we never made any territorial claims to date, but we also categorically state that we have no intention of doing so in the future", said the Indonesian representative, Mrs. Supeni.

Portuguese Timor is expressly mentioned in that statement as being excluded from any territorial claim. No one could be clearer than that.

On 20 December 1974, the International Court of Justice, in the French nuclear tests case (Australia v. France), drew the logical conclusions from such a stance.

According to the Court, when it is the intention of the State acting in that manner "that it should become bound according to its terms, that intention confers on the declaration the character of a legal undertaking, the State being thenceforth legally required to follow a course of conduct consistent with the declaration" (Nuclear Tests Case (Australia v. France), 20 December 1974, I.C.J. Reports 1974, p. 267).

And the Court goes on to say: "An undertaking of this kind, if given publicly, and with an intent to be bound, even though not made within the context of international negotiations, is binding." (ibid., p. 267).

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Indonesia's main purpose was not, of course, to bind itself for the future with respect to Timor, but to make clear to the international community the scope and limits of its territorial claims.

Certainly, the intended effect of such a declaration was to support the validity of the argument that "Indonesia was the national political name of the former Netherlands East Indies" (General Assembly, ninth session, First Committee, 726th meeting).

However, once such a declaration is used to substantiate an argument, the adverse effect of that same declaration - an undertaking such as to bind the State in the future - must also be accepted by Indonesia in accordance with the rule of estoppel.

On a date as close to the facts presented to the Tribunal as 17 June 1974, Mr. Adam Malik, Minister for Foreign Affairs of the Republic of Indonesia, confirmed in a letter to Mr. José Manuel Ramos Horta, the representative of ASDT, that his Government recognized the right to independence of the people of Timor and had no territorial claim on East Timor (cited by P. Hastings, "The Timor Problem I", Australian Outlook, vol. 29, No. 1).

(d) Intervention to restore peace and security in the eastern part of the island of Timor

According to a document prepared by the Department of Foreign Affairs of the Republic of Indonesia, dated March 1977 and entitled "Decolonization in East Timor", the Indonesian House of Representatives on 6 December 1975, the day before the invasion, unanimously adopted a resolution concerning East Timor. The resolution called upon the Indonesian Government to "take steps to restore peace and security in the region, to enable the people of East Timor to exercise their right to self-determination in a free and orderly manner" (p. 39).

Even if one accepted this version of the facts, namely, that the Indonesian Government supported minority parties in order to help them to eliminate FRETILIN (see also "Decolonization in East Timor", Department of Foreign Affairs of the Republic of Indonesia, March 1977, pp. 39-41), the situation alleged by the Government of Indonesia would have to be regarded as a state of civil war, and contemporary international law prohibits any armed intervention by a Government in a civil war, even to give support to the established Government. Far from being of such a nature, the Indonesian armed intervention was aimed, on the contrary, at putting an end to the decolonization process undertaken by the administering Power and would lead to the severance of diplomatic relations between the Portuguese and Indonesian Governments.

(e) Non-viability of the Democratic Republic of East Timor

During the debate at the United Nations, several delegations supported the Indonesian Government's position by expressing doubts about the economic viability of the Territory of East Timor, should it become independent.

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The United Nations General Assembly has devoted special attention to the problem of "micro" Territories.

For instance, in 1972 (resolution 2908 (XXVII)), it requested the Special Committee "to continue to pay particular attention to the small Territories and to recommend to the General Assembly the most appropriate methods and also the steps to be taken to enable the populations of those Territories to exercise fully and without further delay their right to self-determination and independence".

This resolution is, moreover, in conformity with another earlier General Assembly resolution, resolution 2105 (XX) of 20 December 1965.

The question which the General Assembly had to answer was the following: does the United Nations consider the principle of the right of self-determination of peoples, a principle reaffirmed in the Declaration on the Granting of Independence to Colonial Countries and Peoples, to be a fundamental principle applicable to small Non-Self-Governing Territories?

The answer was broadly in the affirmative. Nevertheless, the United Nations did recognize that there could be difficulties when the Territory was too small or too isolated to meet its own economic needs.

That has not prevented some small islands (in the West Indies, for example, or in the Indian Ocean, such as Mauritius) from obtaining independence following consideration of their cases by the United Nations Committee on Decolonization.

As for the particular case of East Timor, Mr. James Dunn, who also gave evidence before the Tribunal, said at the thirty-fifth session of the General Assembly that "East Timor has been described as a very under-developed country which could never become economically viable. The Territory was under-developed but, owing to an increased effort in the education field under the Portuguese colonial administration, by 1974 it had developed an educated élite of sufficient size to provide the basis for self-government. The land itself was poorly developed, but with its rich mountain valleys and extensive plains, where farming had been under development, East Timor could have become self-sufficient in food, with favourable prospects for export. There had also been encouraging prospects for the exploitation of petroleum and metals... It would have been quite possible within five years after decolonization for East Timor to have become one of the more successful cases in the post-war history of decolonization...".

(f) Exercise of the right to self-determination by integration with Indonesia

In its advisory opinion on Western Sahara, the Permanent People's Tribunal reproduced a passage from the opinion of the International Court of Justice on the same subject, a passage based on General Assembly resolution 1541 (XV), to describe the principal means by which a Non-Self-Governing Territory can reach a full measure of self-government, namely:

(a) Emergence as a sovereign independent State;

(b) Free association with an independent State;

(c) Integration with an independent State

(Advisory opinion of 11 November 1979, No. 15).

The Indonesian Government sought to present the integration of East Timor with the Indonesian Republic on 17 July 1976 as the culmination of the exercise by the Timorese people of their right to self-determionation:

> "The wishes of the people of East Timor have been fulfilled, the process of decolonization has been completed, and the right to self-determination has been exercised in a manner of the people's own choosing and in accordance with their traditional democratic system" ("Decolonization in East Timor", Department of Foreign Affairs, Republic of Indonesia, March 1977).

As the International Court of Justice clearly underlined in its opinion on Western Sahara, it is for the people to determine the fate of the territory, and not for the territory to determine the fate of the people. Whatever historical titles are asserted, the free choice of the people is the decisive factor in self-determination.

According to the Indonesian Government, this free choice was supposedly exercised through the submission of a petition in favour of integration by the "representative people's assembly" set up on 31 May 1976 by the "provisional government" which had been installed following the Indonesian invasion.

However, it follows from General Assembly resolution 1541 (XV) of 15 December 1960 that, in order for integration to be acceptable, it must be the result of the freely-expressed wishes of the territory's peoples. This was not the case in Timor: the petition was the work of political organizations operating in exile, without any territorial base in East Timor and with the support of no one but Indonesia. The integration was clearly a unilateral act by the occupying Power and must therefore be condemned, because it came about through the use of force, which is prohibited under Article 2, paragraph 4, of the Charter of the United Nations which was all the more reprehensible in that it deprived a people of the exercise of its right to self-determination.

2. Characterizations of the Indonesian aggression

Following the withdrawal of the Portuguese administration (28 April 1975), FRETILIN, the representative of the people in East Timor, which was in control of the whole territory of the former Portuguese colony, proclaimed the declaration of independence and the establishment of the Democratic Republic of East Timor (28 November 1975). The fact that the Indonesian invasion, launched on 7 December 1975 with the attack on the capital, Dili, prevented the new State from consolidating its effectiveness cannot be invoked to deny that the Republic of East

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Timor was indeed a State at the time of the aggression. It was only gradually that the structures established by the new State were destroyed through the occupation of the Territory by Indonesian armed forces.

Even if that State has now lost some of the effectiveness it had during the years immediately following its creation, that is the result of a destructive act of aggression of which the Indonesian Government itself is guilty and on which it cannot rely in order to distort the nature of the act of aggression which was committed.

This Tribunal does not believe that there is any dichotomy which requires that, before rules of law can be declared valid, a choice must be made between the _principle of effectiveness_ and the _principle of legitimacy_, the first of which takes account of the extent to which the people submit to the rules governing them and of the control exercised by the Government over the total area of national territory, while the second is based on the hypothesis that a rule brings into play an element of value that is constitutive in nature. In its opinion, taking legitimacy alone into consideration and leaving aside effectiveness can have the result of declaring valid so-called legal norms which, since they have no bearing on the actual conduct of the people, would merely be a "dead letter", while considering only effectiveness and ignoring the value that those who are subject to the legal rule freely placed on it would have the reslt of validating norms imposed on the people through fear created by repeated and systematic violations of human rights, the importance of which in contemporary international law requires no further demonstration. In the case in point, the legal régime resulting from the declaration of independence of the Democratic Republic of East Timor on 28 November 1975 was constituted by legal norms which the majority of the population of that country freely recognized as valid from the outset, and this resulted in an effectiveness which seems to be beyond question.

Following the Indonesian invasion, FRETILIN's resistance to the new structures forcibly imposed by the invader is sufficient to prove that those structures were considered invalid and were consequently disobeyed by the people of East Timor.

It is therefore only as a secondary issue that we must consider another characterization of the Indonesian aggression: even if the statehood of the Democratic Republic of East Timor was thought to be fragile, the aggression would still have constituted an attack on the fundamental right of a people to self-determination, with the aggravating circumstance that the people in question had embarked on a process of decolonization.

3. Violations of the law of war and genocide

Not only did the Indonesian Government commit the crime of aggression against East Timor, within the meaning of international law, but it conducted the war against the new Republic in disregard of the most elementary rules of the humanitarian law of war, and it administered the occupied territories in disregard of the fundamental principles of the Universal Declaration of Human Rights.

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In the final analysis, its conduct may be termed genocide, a crime under international law, as defined in the international Convention of 9 December 1948.

(a) Conduct of the war

The humanitarian law of war comprises a body of rules which the parties to the conflict must observe with respect to both combatants and the civilian population. These rules are set forth in various treaties and conventions, the major ones being the Hague Conventions of 1899 and 1907 on the laws and customs of war and the Geneva Conventions of 12 August 1949, supplemented by the Additional Protocols of 1977.

Article 1, paragraph 4, of Additional Protocol I of 1977 extended the scope of the Geneva Conventions in the following terms:

> "The situations referred to in the preceding paragraph include armed conflicts in which peoples are fighting against colonial domination and alien occupation and against racist régimes in the exercise of their right of self-determination, as enshrined in the Charter of the United Nations...".

There is no need to recall here the details of the humanitarian law of war. It covers three main subject areas: weapons and means of waging war, prisoners of war and the non-combatant civilian population.

It is in respect of the treatment of prisoners of war and the civilian population that we must judge the behaviour of the Indonesian authorities in the conduct of the war.

According to the Geneva Conventions, prisoners of war must be treated humanely and interned until the cessation of hostilities, in conditions which are regulated and open to inspection, *inter alia*, by the International Red Cross.

Nothing like this exists in East Timor. There is no information to indicate that prisoners of war can be visited by the Red Cross or any other neutral organization. Prisoners are executed upon capture or detained in atrocious conditions. The civilian population, according to the humanitarian law of war, should be protected against any suffering not resulting strictly from the exigencies of war, and in particular, against mass indiscriminate bombing and against starvation, especially through the destruction of their food supplies.

Yet all the corroborating evidence in the documentation submitted to the Tribunal shows that many villages were systematically destroyed by bombings which killed a large part of the population.

As for economic pillaging and displacements of the population which reduced the survivors to starvation, there is evidance of this also from various sources.

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(b) Administration of the occupied territories

It is recognized today that the fundamental principles of the Universal Declaration of Human Rights of 1948, supplemented by the two International Covenants of 1966, create obligations for States vis-à-vis the international community.

However, it is patently obvious that the occupation of East Timor by Indonesian forces is being conducted in total disregard of the fundamental public freedoms and human rights proclaimed in the above-mentioned instruments.

It goes almost without saying that the fundamental freedoms of movement, expression, association and assembly have been totally suppressed.

As for the rules governing security of the person, prohibiting arbitrary arrest and granting any accused person the benefit of a proper public trial at which the rights of the defence are guaranteed, it is again clear that they are totally ignored.

There is not a single article of the Universal Declaration or of the International Covenants that is not systematically violated day after day by the Indonesian de facto authority in East Timor.

(c) Genocide

The Tribunal finds it totally justified that several authoritative sources have accused the Indonesian Government of committing genocide against the Maubere people in East Timor.

Genocide is a crime under international law defined in the 1948 Convention, which provides for its prevention and punishment.

Mass killings, the infliction of bodily harm, deportations, and so on, do not in themselves constitute genocide. In addition, as provided by the Convention, such acts must have been committed "with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such".

In the case of East Timor, the Tribunal is aware of the scale of the massacres to which its people have fallen victim. But it is also aware, thanks to all the evidence placed before it, of the intent to annihilate the national and cultural identity of the Maubere people. It is that people "as such" which it sought to destroy.

The combination of massacre and cultural destruction demonstrate without a shadow of doubt that this is indeed a case of genocide.

The Indonesian authorities wish not only to destroy the national and cultural identity of the Maubere people but to force them, by the barbarous methods we have recited, into assuming Indonesian citizenship.

The Tribunal finds that the Indonesian authorities must be condemned for the crime of genocide in addition to the crime of aggression.

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II. OTHER GOVERNMENTS

A. The United States Government

1. General

Because of the serious and flagrant violations of the most elementary principles governing international relations, the Indonesian aggression in Timor raises the question of the responsibility of other Governments, especially those which have major interests in the region.

In a world dominated by interdependence of nations and by bloc policies, and in a region where international relations are characterized by a close network of alliances and military agreements, Indonesia's intervention cannot be seen as the outcome of an isolated decision by its Government. The first problem that arises, therefore, is the role played by the United States, the economic and hegemonistic power in the region.

Since 1945 in particular, following a line already embarked on early in the century, politicians and businessmen in the United States have considered South-East Asia an important source of raw materials, and later of cheap labour. In addition, United States military leaders attach prime importance to it in the framework of the global strategy of East-West confrontation.

This pattern of thinking, directed towards appropriating the wealth of South-East Asia, building anti-communist alliances there, maintaining raw material prices at the lowest level, controlling strategic sea lanes and pursuing other military goals, accounts for the aid given to the French colonial régime in Indo-China, the subsequent involvement in Viet Nam and the steps taken to overthrow the Sukarno régime in Indonesia.

Following Sukarno's overthrow, Indonesia became the spearhead of United States strategy in South-East Asia and the United States Government delivered increasingly substantial arms supplies to the new military régime, as well as providing large-scale economic aid. In addition, it arranged for the training of Indonesian police officers of various ranks to ensure that it could count on loyal and competent administrators.

Between 1967 and 1974 Washington provided Djakarta with $1.5 billion in economic aid and more than $94 million in military aid.

Political links between the two countries became closer; in that context, it is hardly conceivable that Indonesia's decision on its aggression against East Timor was taken without the consent of the United States.

This general assumption was confirmed by a series of precise facts presented before the Tribunal.

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2. Stepping-up of bilateral relations

Bilateral relations between the United States and Indonesia were stepped up as the date for the invasion of East Timor approached.

In July 1975, President Suharto made a five-hour stopover in Washington and received assurances from President Ford that the United States firmly intended to increase military aid to Indonesia. Following that visit, Suharto made his first public statement opposing independence for East Timor.

The visit by an Indonesian delegation to the United States from 14 to 23 October 1975 is of particular importance. The delegation was headed by Major-General Ali Murtopo, deputy chief of President Suharto's secret service, who was later to play a decisive role in planning the invasion of East Timor and who is now Minister of Information.

Finally, on 6 December 1975, President Ford and Secretary of State Kissinger were received at Djakarta. On 7 December, 12 hours after that meeting, the aggression began.

A news dispatch published on 7 December by the Los Angeles Times reported a statement made by Kissinger to the press in Djakarta. According to the dispatch, Kissinger stated that the United States would not recognize the Democratic Republic of East Timor and that it "understood Indonesia's position on the question".

3. Build up of military aid

Even clearer proof of United States involvement in the aggression against Timor is provided by the quantitative and qualitative data on American military aid to Indonesia, which is almost entirely dependent on the United States for its military might. There is every indication that this aid increased considerably in the second half of 1975, since, following the fall of the Lon Nol régime in Cambodia, President Ford decided to transfer to Indonesia some - the amount has never been disclosed - of the $475 million in the emergency fund for Cambodia.

In any case, the United States granted to the Indonesian Government during 1975 military aid 450 per cent higher than in the previous year. The matériel provided was destined for East Timor and included 16 OV-10 anti-guerilla aircraft, 45 V-150 tanks and 3 C-130 transport planes.

According to a United States military source, Admiral La Roque, "the Rockwell OV-10s are especially important to the Indonesians. These are slow-flying planes specially designed for anti-guerilla missions against an enemy who has no anti-aircraft defenses" and "the V-150 tanks ... are very effective in anti-guerilla operations where the enemy has only light weapons".

During 1976 United States military aid further increased, to an amount of $54 million. It continued to increase in subsequent years and, according to the United States Department of Defense, the military assistance provided to Indonesia

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from the time of the aggression against East Timor exceeded $250 million by 1979. (United States Department of Defense, Military Sales Abroad and Data on Military Assistance, Washington, December 1979).

It was only as a result of this massive aid that the Indonesian army, which throughout 1976 and for much of 1977 controlled only the capital, Dili, and the coastal area, successfully launched a military offensive throughout the territory of East Timor and succeeded in driving over 200,000 Timorese down from the mountains by means of a search and destroy operation, as reported by The New York Times on 19 April 1978.

Four Skyhawk aircraft and Bell helicopters delivered by the United States in 1977-1978 were used in these operations; they were responsible for the complete destruction of crops and of all food supplies. They brought starvation to hundreds of thousands of Timorese.

It must be stressed that most of the matériel was delivered to the Indonesians as a result of commitments made by Vice President Mondale of the United States during his visit to Indonesia in late 1977.

4. Diplomatic support and pro-Indonesian propaganda

On the diplomatic front, the United States Government was engaged in an intensive cover-up of the Indonesian aggression. From the time of the debate which preceded the vote on the United Nations General Assembly resolution of 1 December 1976 calling for the withdrawal of Indonesian troops from the Territory of East Timor, the United States aligned itself completely with the Indonesian position and systematically voted against all resolutions in favour of self-determination and independence for East Timor.

In keeping with this attitude, representatives of the United States Government continually attempted to minimize the problem of East Timor, stating on several occasions that that country was part of Indonesia and that the issue was not whether international standards of conduct or international principles had been violated, but rather recognition of a fait accompli, the United States having from the political point of view recognized the annexation of East Timor and the legitimacy of the exercise of sovereignty on the part of the Indonesian Government (George H. Aldrich - Hearing, June-July 1977).

In addition, United States Government spokesmen constantly attempted to divert the attention of American public opinion from Indonesia's responsibility, attributing the loss of life to the armed conflict between FRETILIN and UDT with never a word about the destruction of villages and crops, the massacres, the forced displacement of hundreds of thousands of people and the ravages inflicted on the people by the 1977-1978 campaigns.

It should be noted that the United States Ambassador to Indonesia visited East Timor in September 1978.

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Since these facts are the subject of evidence which agrees in all respects, the Tribunal finds that, taken together, they constitute proof that the United States Government encouraged and supported the Indonesian aggression against East Timor.

5. Arguments advanced for United States support for the Indonesian aggression

The United States attitude towards East Timor is in keeping with its foreign policy, which systematically subordinates the needs and rights of all other peoples to the interests of its imperialist policies. In the case of East Timor, for strategic, political and ideological reasons, the formation of a free and independent State in that part of the world clearly posed a threat to the United States.

East Timor is of crucial strategic importance because of its geographical situation, since the most direct route between the two United States naval bases in Guam and Diego Garcia passes through the Sunda Strait, which is controlled by whatever forces hold power in East Timor.

Apart from these strategic and military reasons, the United States cannot bear to see a country in that part of the world build its own future independently of imperialism, and beyond the grasp of the United States and its local "policemen". The existence of an independent State following a different socio-economic model from the one which Western cultural imperialism imposes or seeks to impose on developing countries is intolerable to the United States.

It is obvious that such a State, although small, poor, peaceful and unarmed, could be a spark-plug for disintegration of the system of imperialist domination, because it might set an example for the tens of millions of people who make up the exploited and potentially rebellious peasant population of the third world, including that part of the globe.

The first country threatened by such a reality would be Indonesia, whose vast rural masses are oppressed by the Djakarta generals. The establishment, so close to its frontiers, of a different style of life and of human relations could not fail to have repercussions in Asia, but also in Africa and in Latin America, on the very doorstep of the United States.

From this viewpoint, the thesis of a communist threat and destabilization which a free East Timor represents is similar to the thesis adopted by the United States Government with respect to El Salvador; for, in United States diplomatic parlance, anything that might loosen the grip of imperialism on peoples and anything that is likely to cause cracks in the United States system of domination is communist.

Paradoxically, the very lack of size of East Timor and its geographical isolation strengthen the explosive potential of a free State in that part of the world. It would show that imperialist designs are not invincible and that the hopes and dreams of a large part of mankind can become a concrete reality, even in the most difficult of situations and in places most isolated from anti-imperialist solidarity.

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The argument that East Timor lacks economic viability reflects, in the first place, a cultural imperialism dominated by the myth of all-embracing industrialization; secondly, it is an expression of fear that the success of a novel, ground-breaking experiment would constitute an intolerable challenge to the model imposed by imperialism.

B. The Australian Government

The considerations set forth above suffice to explain United States involvement in the aggresssion against East Timor, but they also cast light on the attitude towards the tragedy of the Maubere people of all the countries linked to United States imperialism. First and foremost among them we must mention Australia, which because of its geographical position is directly affected by the situation in East Timor. The reports submitted to the Tribunal show that Australia has granted to Indonesia, since the invasion of Timor, military aid to the value of 35 million. No guarantee was sought as to the use of this aid. The same reports indicate that the search for an ever-closer understanding with the Djakarta régime is a constant feature of Australian foreign policy.

Accordingly, as early as the beginning of 1973, the then Labour Prime Minister of Australia, Gough Whitlam, was saying with respect to Indonesia: "The future of our two countries is for ever linked and our relations will become a crucial factor in determining the future of our region up to the end of the century." (Hyde, The Asian Connection, p. 61).

In 1975 the same Whitlam, over the objections of the Australian Department of Foreign Affairs and a large segment of Australian public opinion, rejected the Portuguese proposal that Australia should bring the belligerent parties together with a view to settling the conflict.

The same political line was followed by the Liberal Government which succeeded the Labour Government. In January 1978 the Prime Minister, Malcolm Fraser, gave de facto recognition to the annexation of East Timor by Indonesia. Twelve months later, the same Government embarked on negotiations with Indonesia for the purpose of delineating the sea-bed boundary between East Timor and Australia, thereby implying de jure recognition of the sovereignty which Indonesia claimed to exercise over East Timor.

C. The IGGI Governments

The Tribunal was also informed of the position of other Governments whose interests in the region are less immediate but which are indirectly implicated in the Indonesian aggression. They include in particular the Governments of Japan, France, the Netherlands, the Federal Republic of Germany, Austria, New Zealand, Canada, the United Kingdom, Belgium, Italy, Denmark and Switzerland, which, together with the United States and Australia and with the World Bank and the Asian Development Bank, are members of the Intergovernmental Group of Indonesia (IGGI) that has for 16 years been providing the Indonesian Government with financial aid to the value of approximately $2 billion a year, in the form of loans with interest.

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These loans are specifically intended for social projects to combat poverty and malnutrition. In practice, no such projects have been implemented and the Indonesian rural masses continue to live below the subsistence level. What is more, for several years Indonesia's foreign trade has shown a credit balance such that, according to experts, it would have been possible to allocate at least $6 billion a year to the country's development. This possibility, and the fact that as a result of the aid provided by IGGI Indonesia's external debt is at present roughly $23 billion, have caused World Bank experts to question the validity of this type of aid, which in fact seems to have been used mainly to build up Indonesia's military might through the purchase of increasingly sophisticated military hardware.

Even if it is not possible to state categorically that the aid provided by IGGI was _directly_ used by the Indonesian Government in its aggression against East Timor, it is certain that _indirectly_ the aid contributed in a major way to making the aggression possible. In the first place, it increased the Indonesian Government's capacity to purchase sophisticated military hardware, and, secondly, it promoted the formation of links between the Indonesian régime and the industries of the IGGI member countries. Despite national laws prohibiting the export of arms, those industries often obtain the necessary export licences. For instance, the British Government authorized the export of Hawk aircraft, Australia authorized Nomad aircraft and Landrovers for anti-guerrilla operations, France sold helicopters and Germany submarines, while the Netherlands Government authorized the sale of Fokkers to carry troops to East Timor. Recently, further contracts for the sale of planes were announced in the Netherlands.

However, the United States remains the major supplier through its aircraft industry and, more generally, its military-industrial complex. For example, it appears that a large World Bank loan intended for the transfer of peasants from the over-populated island of Java to outlying islands was largely used to purchase Lockheed Hercules C-130 troop transports.

The aggressive policy of Indonesia is not simply the price paid by imperialism to maintain the _status quo_ in the region but is becoming a component part of the system, a well-fitting cog in the economic machinery, helping to drive it ever faster.

Profitable business, industrial development and the level of employment have become the major concerns of the members of IGGI. This explains why the Governments in question, several of which abstained from voting on the United Nations General Assembly resolutions on East Timor, and first and foremost the Netherlands Government, which presides over the annual Conference, do not care to raise the issue at the annual general meeting of IGGI or to make cessation of the aggression a pre-condition for continued financial aid. In other words, the annihilation of the Maubere people must take second place to business needs.

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The crisis of international law and of the principles of the United Nations Charter is thus seen to be closely linked to an economic system which finds in United States imperialism both its motive force and a bastion to prevent other countries from experimenting with different paths towards a new international order.

In these circumstances, the obligation which devolves on all countries of the world to take a stand against the destruction of the Maubere people assumes particular urgency for the industrialized countries, which must be required not only to adopt a clear position at the political and diplomatic levels but also to take a consistent stand in international economic bodies such as IGGI, the World Bank and IMF and, in general, in all the organizations which imperialism still maintains in its grip at the expense of peoples seeking fully to affirm their right to self-determination.

D. The Portuguese Government

Portugal has a special obligation because, as the former colonial Power, it bore prime responsibility for bringing about the achievement of the Timorese people's right to self-determination, a responsibility which it solemnly acknowledged in Act No. 7/75 of 27 July 1975 and in article 307 of its new Constitution, which states: "Portugal is bound by its obligations, in accordance with international law, to promote and guarantee the right to independence of East Timor."

DECISION

The Tribunal,

- Considering that the use of force in international relations constitutes a serious violation of the rules of international law and a threat to peace;

- Considering the imprescriptible right of the people of East Timor to self-determination;

- Considering that since 7 December 1975 Indonesian troops have entered the territory of the Democratic Republic of East Timor en masse;

- Considering the serious breaches of the humanitarian law of war committed by the Indonesian forces and the continual violations of human rights by the occupation authorities;

- Considering that the material element (massacres, deportations, systematic starvation, etc.) and the element of intent (destruction of national identity and forcible assimilation) of the crime of genocide against the Maubere people are present;

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CONSEQUENTLY DECIDES THAT:

- The entry of Indonesian troops into, and their continued presence in, the territory of the Democratic Republic of East Timor is, within the meaning of international law, an act of aggression prohibited under article 2, paragraph 4, of the Charter of the United Nations and defined as such by United Nations General Assembly resolution 3314 (XXIX);

- The Government of Indonesia is guilty of a crime against international peace in accordance with the characterization of a war of aggression set forth in General Assembly resolutions 3314 (XXIX) and 2625 (XXXI), such aggression giving rise to international responsibility;

- The Government of Indonesia is guilty vis-à-vis the Maubere people of East Timor of violation of article 5 of the Universal Declaration of the Rights of Peoples, concerning the right to self-determination;

- The Government of Indonesia, by reason of its serious and repeated breaches of the laws and customs of war, is guilty of war crimes;

- The Government of Indonesia, by committing a series of serious acts with intent to destroy, in whole or in part, a national group as such, namely, the Maubere people, is guilty of the crime of genocide;

- The United States Government, by supplying the Government of Indonesia with decisive aid and assistance, is guilty of complicity in aggression;

- Any Government or organization which furnishes aid or assistance to the Government of Indonesia is guilty of complicity in aggression. Conversely, any Government or organization which furnishes aid or assistance to the victim of aggression, East Timor, is merely fulfilling its international duty.
